

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-052407

11/30/2015

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT
W. Tenoever
Deputy

JOHN MOTTA

BETH K FINDSEN

v.

FLAGSTAR BANK

DENNIS L DANIELS

UNDER ADVISEMENT RULING

On September 14 and 14, 2015, the parties presented evidence at a bench trial on Counts One and Two and the damages aspects of Counts Four and Five of Plaintiff's First Amended Complaint.

THE COURT FINDS:

- Mr. Motta testified that he relied on Flagstar's representations that he would be offered a loan modification, and that he intended to accept the offer of participation in the HAMP program by making a "trial period payment" on the morning of April 1, 2011 but was prevented from doing so by the March 31 trustee's sale. This testimony is the keystone of the plaintiff's case.
- When Mr. Motta bought the Wescott property, he owned another property that secured a line of credit on which Mr. Motta was personally liable. He intended to sell that property and pay off the obligation on the line of credit. But the collapse of the housing market reduced the value of both properties so that they were worth less than the loans that they secured.
- Mr. Motta's goal, in his dealings with Flagstar, was to reduce the principal on the loan secured by the Wescott house so that he could refinance the other house. Flagstar never

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represented to Mr. Motta that the principal amount of the loan could be reduced, aside from the minimal reduction that would have resulted from successful completion of the HAMP program. There is no evidence that the lender ever would have considered a principal reduction.

- The main effect of the HAMP program would have been a reduction in Mr. Motta's monthly payment on the Wescott property. Even assuming that Mr. Motta could have made the reduced payment (which is not at all clear), he still would not have had sufficient credit to refinance the other house. He would have wound up continuing to pay more for both houses than they were worth, and risking personal liability if he came up short.
- Mr. Motta's contemporaneous statements to Flagstar's representatives (Exhibit 108) show that he understood the situation. On March 24, 2011, a week before the deadline for making the first "trial period payment," a representative reported that "he is not sure what he is going to do yet . . . his issue is that he has another property he can't sell . . . his concern is his property value and why he would want to do a mod to save it."
- Against this factual backdrop, Mr. Motta's testimony about his intention to participate in the HAMP program was not sufficiently credible to carry the burden of proof. It is likely that Mr. Motta was holding out in the hope that someone would entertain his request for a principal reduction; and it is more likely than not that he would have continued to hold out until Flagstar ended the matter by proceeding with the trustee's sale.

THE COURT CONCLUDES, based on the above facts, that Mr. Motta has failed to prove causation of his alleged damages on Count One (Negligent Misrepresentation), and that he has failed to prove reliance for purposes of Count Two (Consumer Fraud). Flagstar Bank therefore is not liable on either Count One or Count Two.

THE COURT FURTHER FINDS:

- Assuming for the sake of argument that the contents of the recorded documents "falsely" stated the identity of the beneficiary and the holder of authority to invoke the power of sale, the evidence does not establish that Flagstar "knew or had reason to know" the representations were false.
- Flagstar's conduct was not the proximate cause of the judgment for attorneys' fees obtained by the third-party purchaser. That judgment resulted from Mr. Motta's own misunderstanding of his legal rights and remedies.

THE COURT THEREFORE CONCLUDES that Flagstar Bank is not liable on Count Four (False Recording pursuant to A.R.S. section 33-420).

THE COURT FURTHER FINDS:

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- Mr. Motta did not default at the direction of Flagstar. He was in default for several months before he first contacted Flagstar.
- Mr. Motta continued to be in default up until the time of the trustee's sale. In deciding not to pay on the loan, Mr. Motta was not relying on any promises made by Flagstar.
- Flagstar did not exercise its right of foreclosure unfairly or in bad faith.

THE COURT THEREFORE CONCLUDES that Flagstar Bank is not liable on Count Five (Wrongful Foreclosure) under any of the versions of that tort described in Schrock v. Nat'l Mortgage Ass'n, No. CV 11-0567-PHX-JAT, 2011 WL 3348227 at 6-8 (D. Ariz. 2011) and Mukarugwiza v. J.P. Morgan Chase Bank, N.A., No CV15-00079-PHX-NVW, 2015 WL 3960889 at 4 (D. Ariz. 2015).

IT IS ORDERED entering verdicts against plaintiff John Motta and in favor of defendant Flagstar Bank on all counts of the First Amended Complaint.

IT IS FURTHER ORDERED that defendant Flagstar shall have twenty days, from the date on which the Clerk transmits this order to the parties, within which to submit a proposed form of judgment and any application for attorneys' fees and costs that may be appropriate. Plaintiff Motta shall have twenty days from the date of submission in which to file any written response or objections.